

(2) Neither the party that requested the hearing nor the party's representative appears at the time and place set for the hearing, if—

(i) The party was notified before the time set for the hearing that the request for hearing might be dismissed without further notice for failure to appear;

(ii) The party did not appear at the time and place of hearing and does not contact the ALJ hearing office within 10 days and provide good cause for not appearing; or

(iii) The ALJ sends a notice to the party asking why the party did not appear; and the party does not respond to the ALJ's notice within 10 days or does not provide good cause for the failure to appear.

(iv) In determining whether good cause exists under this paragraph (a)(2), the ALJ considers any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language), that the party may have.

(3) The person or entity requesting a hearing has no right to it under § 405.1002.

(4) The party did not request a hearing within the stated time period and the ALJ has not found good cause for extending the deadline, as provided in § 405.1014(c).

(5) The beneficiary whose claim is being appealed died while the request for hearing is pending and all of the following criteria apply:

(i) The request for hearing was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the ALJ considers if the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation of liability provisions based on the denial of the services at issue.

(ii) No other individuals or entities that have a financial interest in the case wish to pursue an appeal under § 405.1002.

(iii) No other individual or entity filed a valid and timely request for an ALJ hearing in accordance to § 405.1014.

(6) The ALJ dismisses a hearing request entirely or refuses to consider any one or more of the issues because a QIC, an ALJ or the MAC has made a previous determination or decision under this subpart about the appellant's rights on the same facts and on the same issue(s) or claim(s), and this previous determination or decision has become final by either administrative or judicial action.

(7) The appellant abandons the request for hearing. An ALJ may conclude that an appellant has abandoned a request for hearing when the ALJ hearing office attempts to schedule a hearing and is unable to contact the appellant after making reasonable efforts to do so.

(b) *Notice of dismissal.* The ALJ mails a written notice of the dismissal of the hearing request to all parties at their last known address. The notice states that there is a right to request that the MAC vacate the dismissal action.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005]

**§ 405.1054 Effect of dismissal of a request for a hearing before an ALJ.**

The dismissal of a request for a hearing is binding, unless it is vacated by the MAC under § 405.1108(b).

**APPLICABILITY OF MEDICARE COVERAGE POLICIES**

**§ 405.1060 Applicability of national coverage determinations (NCDs).**

(a) *General rule.* (1) An NCD is a determination by the Secretary of whether a particular item or service is covered nationally under Medicare.

(2) An NCD does not include a determination of what code, if any, is assigned to a particular item or service covered under Medicare or a determination of the amount of payment made for a particular item or service.

(3) NCDs are made under section 1862(a)(1) of the Act as well as under other applicable provisions of the Act.

(4) An NCD is binding on fiscal intermediaries, carriers, QIOs, QICs, ALJs, and the MAC.

(b) *Review by an ALJ.* (1) An ALJ may not disregard, set aside, or otherwise review an NCD.